IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2454 OF 2007

Shrenik Dasharath Chavan ..Applicant

Vs.

1. Ashwini Shrenik Chavan and ors. ..Respondents

Mr. Dasharath Chavan i/by S.D. Chavan - in - person.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 28, 2007.

P.C.:

1. Heard Mr. Dasharath Chavan as party-in-person appearing for the applicant who is his son. Leave to amend to delete respondent nos.2 & 3. Amendment be carried out forthwith. In P.E.No.580 of 2006 the claim made by the present respondent-wife is for maintenance under Section 125 of Cr.P.C. The husband had submitted an application in the Family Court on 8/2/2007 seeking permission that his father would defend him in the trial of the case and by an order dated 22/2/2007 the application was allowed and consequently, Mr.Dasharath Chavan started corss-examination of the respondent no.1-wife (original applicant). It appears that the examination-in-chief of the applicant-wife was started

on 31/5/2007 and on 14/6/2007 Mr.Dasharath Chavan started further cross-examination of the applicant-wife. In the course of the cross-examination he asked the applicant-wife a question regarding the whereabouts of the ornaments given by her father and this question was found to be irrelevant by the learned Judge of the Family Court. It appears the Family Court found that Mr.Dasharath Chavan was asking such irrelevant questions in the cross-examination and the court was also not happy with the manner in which the cross-examination was continued. Therefore, on 14/6/2007 the respondent-husband was directed to engage an Advocate or to cross-examine the applicant-wife himself.

2. Being aggrieved by this order, the husband preferred an application for transfer of the case to any other Family Court at Pune and the learned Principal Judge by her order dated 30/6/2007 rejected the said application holding that the power to transfer the case from one Family Court to another, except on the administrative grounds, vests with the High Court.

3. Though I am satisfied that the prayer for transfer of the case from Court No.2 to any other Family Court at Pune is devoid of merits, at the same time, the respondent-husband cannot be forced to engage an Advocate or to conduct the cross-examination by himself when his application for leave to defend his side by his father was allowed by the Family Court. The claim before the Family Court at the instance of the wife is for maintenance under Section 125 of Cr.P.C. and the Family Court was justified in pointing out to Mr.Dasharath Chavan that the questions in the cross-examination were irrelevant. But so long as the defence representative continues the cross-examination on the premises of defending the application under Section 125 of Cr.P.C., it would not be in keeping with the requirement of justice that he is denied the same opportunity at this stage.

4. Hence, the application is hereby rejected and at the same time Mr. Dasharath Chavan is directed to continue with the cross-examination of the claimant before the Family Court on the premises to defend the application filed under Section 125 of Cr.P.C. and he would not ask questions relating to the offence

punishable under Section 498-A of IPC which is, admittedly, a subject matter of another complaint pending before another court. The Family Court is directed to allow Mr.Dasharath Chavan to continue to defend his son so as to complete the cross-examination on the premises of defending the claim under Section 125 of Cr.P.C.

(B.H. Marlapalle,J.)